

AUG 16 2011

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
HARRISONBURG DIVISION

JULIA C. DUDLEY, CLERK  
BY:  DEPUTY CLERK

UNITED STATES OF AMERICA,	)	
	)	Criminal No. 5:02cr30041-004
	)	
v.	)	<u>2255 MEMORANDUM OPINION</u>
	)	
WILLIAM PETTIS.	)	By: Samuel G. Wilson
	)	United States District Judge

Petitioner, William Pettis, a federal inmate proceeding pro se, filed a “motion to discontinue sentence.” Because Pettis challenges the validity of his conviction and sentence, the court construes his submission as a motion to vacate, set aside or correct sentence pursuant to 28 U.S.C. § 2255.<sup>1</sup> Upon review of the record, however, the court concludes that Pettis’ instant § 2255 motion must be dismissed as successive.

I.

Pettis challenges his 322-month sentence for conspiring to distribute and possess with the intent to distribute more than fifty grams of cocaine base and possessing a firearm in furtherance of a drug trafficking crime. Court records indicate that Pettis previously filed a § 2255 motion, Civil Action No. 7:05-cv-00610 (W.D. Va.), regarding the same conviction and sentence.<sup>2</sup> This court may consider a second or successive § 2255 motion only upon specific certification from the United States Court of Appeals for the Fourth Circuit that the claims in the motion meet certain criteria. See § 2255(h). As Pettis has not submitted any evidence of having obtained

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<sup>1</sup> The characterization of a pro se motion is determined by its subject matter and not the caption the petitioner assigned to it. See Calderon v. Thompson, 523 U.S. 538, 554 (1998). A court may recharacterize a pro se motion “to create better correspondence between the substance of the . . . motion’s claim and its underlying legal basis.” Castro v. United States, 540 U.S. 375, 381 (2003).

<sup>2</sup> The court notes that Pettis has also filed two other successive § 2255 motions.

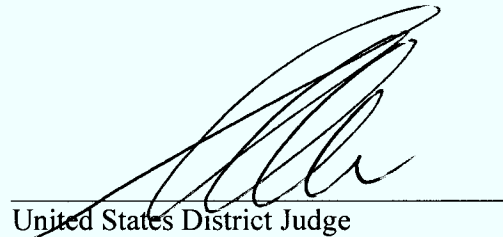
certification from the Court of Appeals to file a second or successive §2255 motion, the court must dismiss his petition as successive.<sup>1</sup>

## II.

For the reasons stated, the court dismisses Pettis' motion as a successive § 2255 motion.

The Clerk is directed to send copies of this Memorandum Opinion and the accompanying Order to the parties.

ENTER: This 16th day of August, 2011.



United States District Judge

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<sup>1</sup> Petitioner is hereby advised of the procedure for obtaining certification from the United States Court of Appeals for the Fourth Circuit to have this court review a successive § 2255 motion. Petitioner must submit a copy of the successive § 2255 motion to the Court of Appeals, along with a motion requesting a three-judge panel certification that the district court may review the successive § 2255 motion. See 28 U.S.C. § 2244 (as amended, 1996). A Fourth Circuit form and instructions for filing this motion will be included with this notice or are available from the Fourth Circuit at the following address: Office of the Clerk, United States Court of Appeals for the Fourth Circuit, 900 E. Main St., Richmond, VA 23219.